

# NAVAL INSPECTOR GENERAL

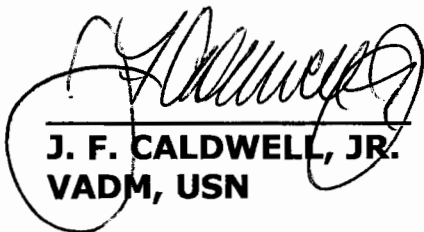
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## REPORT OF INVESTIGATION

Subj: SENIOR OFFICIAL CASE 201202603; ALLEGED VIOLATIONS OF  
THE <sup>(b) (6), (b) (7)(C)</sup> BT MR. STEPHEN C. DUNN

11 Jan 14



  
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VADM, USN

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Office of the Naval Inspector General

Case Number: 201202603

Report of Investigation

11 January 2014

Subj: NAVY SENIOR OFFICIAL CASE 201202603; ALLEGED VIOLATIONS  
OF THE (b) (6), (b) (7)(C) BY MR. STEPHEN C. DUNN

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Preliminary Statement

1. On 3 August 2012, the Office of the Naval Inspector General (NAVINSGEN) received an anonymous complaint alleging that Mr. Stephen C. Dunn, the Comptroller and Business Resource Manager for Space and Naval Warfare Systems Command (SPAWAR), improperly retained a re-employed annuitant on his staff beyond the maximum time permitted by regulation. The complainant alleged that Mr. Dunn extended (b) (6), (b) (7) period of re-employed federal service at SPAWAR in order to retain access to an owner's box that (b) (6), (b) (7) and her husband purchased at the Del Mar Thoroughbred Club's Racetrack in Del Mar, CA. The complainant further alleged that Mr. Dunn improperly promoted (b) (6), (b) (7)(C) to a "Director" position on his staff, in violation of merit system principles, during the time (b) (6), (b) (7)(C) was a re-employed annuitant.

2. Accordingly, we formed the following allegations for investigation:

**Allegation #1:** (b) (6), (b) (7)(C)

**Conclusion:** The allegation is not substantiated.

**Allegation #2:** That Mr. Dunn improperly accepted multiple gifts from an employee receiving less pay than him, in violation of 5 CFR 2635.302.

**Conclusion:** The allegation is substantiated.

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### Findings of Fact - Allegations 1 and 2

3.

(b) (6), (b)  
(7)(C)

4.

(b) (6), (b)  
(7)(C)

(b) (6), (b) (7)(C) testified that while she was employed at SPAWAR in 2003, she and (b) (6), (b) (7)(C) purchased a one third share in an owner's box at the Del Mar Thoroughbred Club's Racetrack.

(b) (6), (b) (7)(C) stated that she and (b) (6), (b) (7)(C) used their owner's box on a regular basis each year since they purchased it.

(b) (6), (b) (7)(C) explained that after she and (b) (6), (b) (7)(C) acquired their owner's box, they hosted their friends as well as some of

(b) (6), (b) (7)(C) s SPAWAR co-workers in their owner's box on a regular basis.

5.

Mr. Dunn testified that he reported to SPAWAR and took over as Comptroller, a Senior Executive Service (SES) appointment, in late 2001. (b) (6), (b) (7)(C) was a branch head at SPAWAR when he reported. Although Mr. Dunn was not (b) (6), (b) (7)(C) immediate supervisor during most of the time they were employed together at SPAWAR, there was always a senior-subordinate relationship between the two of them during their professional association. Mr. Dunn was an SES; (b) (6), (b) (7)(C) was a GS-14/15 grade equivalent employee.

6.

Mr. Dunn testified that he first accepted (b) (6), (b) (7)(C) invitation to be her guest in the owner's box she and (b) (6), (b) (7)(C) owned at the Del Mar racetrack sometime very early in their association at SPAWAR. Mr. Dunn estimated that he used the box "once or twice" each year during the time (b) (6), (b) (7)(C) worked with him at SPAWAR and she owned the box. Mr. Dunn also testified that he typically went to the racetrack as (b) (6), (b) (7)(C) guest on a Saturday or during other non-work hours and that he always paid for his own general admission to enter the racetrack's grounds. This was general standing-room-only admission. Mr. Dunn further testified that approximately 80 percent of the time he went to the Del Mar racetrack as (b) (6), (b) (7)(C) guest, there were other SPAWAR employees present who either worked for or with (b) (6), (b) (7)(C)

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7. (b) (6), (b) (7)(C) testified that Mr. Dunn joined her as her guest at the Del Mar racetrack "maybe once a year, twice a year." She did not provide tickets to Mr. Dunn, or any of her other guests, she simply allowed her guests to sit with her in the designated seating of her owner's box.

8. We contacted the Del Mar racetrack to ascertain the cost of comparable seating on the same level as the owner's box. According to (b) (6), (b) (7)(C), an employee of the Del Mar Thoroughbred Club, if purchased through general admission, seating on the same level as an owner's box costs \$10 per seat over the general standing-room-only admission price charged on weekends.<sup>1</sup>

9. Mr. Dunn testified that he spoke with (b) (6), (b) (7)(C), the (b) (6), (b) (7)(C), about whether it would be appropriate for him to accept (b) (6), (b) (7)(C) offer to be her guest in the owner's box she and (b) (6), (b) (7)(C) owned at the Del Mar racetrack. Mr. Dunn said that (b) (6), (b) (7)(C) offered no objection to him accepting (b) (6), (b) (7)(C) offer in view of the fact that Mr. Dunn paid for his own cost of general admission to the racetrack grounds and there was no additional cost paid by (b) (6), (b) (7)(C) when Mr. Dunn sat in her owner's box.

10. (b) (6), (b) (7)(C) however, testified that he did not speak directly with Mr. Dunn about the invitation Mr. Dunn received from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) stated that he believed that the SPAWAR ethics counselor likely discussed the gift offer scenario with Mr. Dunn and explained the gift acceptance rules to Mr. Dunn during one of the annual ethics training sessions. (b) (6), (b) (7)(C) said he knew Mr. Dunn attended.

11. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

<sup>1</sup> Witnesses described the Del Mar racetrack's owner's box as a group of seats (plastic bench seats) that were enclosed by a metal rail and sitting on a cement platform. An owner's box was not an enclosed air conditioned space like the owner's boxes that can be found in professional baseball and football stadiums.

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(b) (6), (b) (7)(C) [Redacted]

12. (b) (6), (b) (7)(C) [Redacted]

(b) (6), (b) (7)(C) [Redacted]

a. (b) (6), (b) (7)(C) [Redacted]

b. (b) (6), (b) (7)(C) [Redacted]

[Redacted]

e. (b) (6), (b) (7)(C) [Redacted]

13. (b) (6), (b) (7)(C) [Redacted]

14. (b) (6), (b) (7)(C) [REDACTED]

15. (b) (6), (b) (7)(C) [REDACTED]

16. (b) (6), (b) (7)(C) [REDACTED]

17. (b) (6), (b) (7)(C) [REDACTED]

18. (b) (6), (b) (7)(C) [REDACTED]

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19. (b) (6), (b) (7)(C)

20. (b) (6),  
(b) (7)  
(C)

21. On 17 December 2013, we forwarded a draft copy of our report of investigation to Mr. Dunn and asked him to comment about our tentative conclusions. In his reply on 21 December 2013, Mr. Dunn stated that he disagreed with our determination about allegation number two. Mr. Dunn cited the general exceptions for the standard we applied and stated that, given the exceptions, he believed that he had not violated the standard. Specifically, Mr. Dunn wrote in his reply to us:

I disagree with the finding based on the General Exceptions allowable under 5 CFR §2635.304, that starts with the following:

"The prohibitions set forth in §2635.302 (a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section." And where section (a) states,

(a) "General exceptions. On an occasional basis, including any occasion in which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of \$10 or less per occasion:"

As highlighted by the draft report and findings both in (b) (6), (b) (7)(C) testimony (page 3, paragraph 7) and again in the Report's Analysis of Allegation #2 (pages 8-9, paragraphs 28 and 29) I believe that "maybe once or twice a year", or "a total of 20 times over an

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approximate 10 year period" represents an occasional basis, as outlined in 5 CFR 2635.304 and as such would be an exception.

Similarly, the value per incident determined in the report's Analysis of Allegation #2 (page 9, paragraph 29) was "approximately \$10 per visit" falls within the General Exception value outlined in 5 CFR 2635.304 subsection (1), "...value of \$10 or less per occasion".

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### Applicable Standard - Allegation #1

22. (b) (6), (b) (7)(C) [REDACTED]

. . . .

(b) (b) (6), (b) (7)(C) . . . .

(2) (b) (6), (b) (7)(C) [REDACTED]

[REDACTED]

(A) (b) (6), (b) (7)(C) [REDACTED]

[REDACTED]

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### Analysis - Allegation #1

23. (b) (6), (b) (7)(C) [REDACTED]

[REDACTED]

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24. (b) (6), (b) (7)(C) [REDACTED]

25. (b) (6), (b) (7)(C) [REDACTED]

\*\*\*\*\*

Conclusion - Allegation #1

26. The allegation is not substantiated.

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## Applicable Standard - Allegation #2

27. 5 CFR 2635 - Standards of Ethical Conduct For Employees of the Executive Branch.

Subpart C - Gifts Between Employees, Section 2635.302  
General standards.

. . . .

(b) Gifts from employees receiving less pay. Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

28. A gift is defined in §2635.203:

For purposes of this subpart, the following definitions shall apply:

. . . .

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

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## Analysis - Allegation #2

29. We determined that Mr. Dunn accepted gifts, in the form of free seating at the Del Mar racetrack, from (b) (6), (b) (7)(C) a subordinate employee, after (b) (6), (b) (7)(C) offered Mr. Dunn the opportunity to join her at the Del Mar racetrack and sit in (b) (6), (b) (7)(C) owner's box as her guest. We determined that

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Mr. Dunn accepted (b) (6), (b) (7)(C) offer to be her guest and sat in her owner's box about 20 times over an approximate ten-year period of time they were employed together as SPAWAR employees. These facts were undisputed by the witnesses.

30. We also determined that the comparative value of the seating Mr. Dunn accepted from (b) (6), (b) (7)(C) was approximately \$10 per visit on the weekend and Mr. Dunn testified that he typically went on a weekend.

31. The standard permits an exception for giving or accepting an otherwise prohibited gift when such a gift is given or accepted in conjunction with some "special, infrequent occasions". Specifically, § 2635.304(b) states:

A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

32. We considered Mr. Dunn's reply to our tentative conclusions and agreed that the gifts he accepted were not significant. We did not, however, determine that the gifts he accepted fell under the infrequent occasion exception.

33. We determined that the special infrequent occasion exception did not apply in this case. Mr. Dunn's repeated acceptance of free seating from (b) (6), (b) (7)(C) was not tied to some major milestone event that most people only experience (at most) a couple of times in a lifetime, e.g., a wedding, retirement or recovery from a major illness. We determined, therefore, that his visits to the racetrack, as (b) (6), (b) (7)(C) guest, were quantitatively far more common than what is permitted by the exception.

34. We concluded, therefore, that Mr. Dunn violated the standard which prohibits a senior from accepting a gift from an employee

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who receives less pay than they do except under limited exceptional circumstances which were not present in this case.

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### Conclusion - Allegation #2

35. The allegation is substantiated.

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### Other Matters We Considered

36. (b) (6), (b) (7)(C) [REDACTED]

37. We made preliminary inquiry into each of the additional allegations to the anonymous complaint we received and upon our further consideration of them determined that they did not represent any additional credible allegations of wrongdoing by Mr. Dunn. For completeness of our report, however, they are discussed in the following paragraphs.

(b) (6), (b) (7)(C) [REDACTED]

38. (b) (6), (b) (7)(C) [REDACTED]

39. (b) (6), (b) (7)(C) [REDACTED]

(b) (6), (b) (7)(C) [REDACTED]

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(b) (6), (b) (7)(C)

40. (b) (6), (b) (7)(C)

41. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

42. (b) (6), (b) (7)(C)

43. (b) (6), (b) (7)(C)

44. (b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

[REDACTED]

(b) (6),  
(b) (7)

[REDACTED]

45. (b) (6), (b) (7)(C)

[REDACTED]

46. (b) (6), (b) (7)(C)

[REDACTED]

47. (b) (6), (b) (7)(C)

[REDACTED]

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48. (b) (6), (b) (7)(C) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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